

AMENDED IN ASSEMBLY MAY 30, 2001

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 19, 2001

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 489**

**Introduced by Assembly Member Migden**

February 21, 2001

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An act to add Section 10247.5 to the Business and Professions Code, to add Chapter 7.6 (commencing with Section 1922) to Title 4 of Part 4 of Division 3 of the Civil Code, *and* to add Sections 3398, 7508, 22168, and 50511 to the Financial Code, ~~and to add Section 13984 to the Government Code~~, relating to residential mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Migden. ~~High-cost home equity~~ *Predatory* loans.

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.

~~This bill would require the Secretary of the Business, Transportation and Housing Agency to adopt regulations with respect to the origination of high-cost real estate loans, relative to defining schemes, devices, or contrivances that are manipulative, deceptive, or otherwise fraudulent and to identifying means to curb abusive practices related to the advertising, brokering, and making of those loans. The regulations would be developed in consultation with the Commissioner of Corporations, the Real Estate Commissioner, the Commissioner of Financial Institutions, and the Attorney General, and the regulations would be enforced by the agencies charged with regulation of specified persons and entities involved in the making of real estate loans: prohibit real estate brokers and agents, commercial and industrial banks, savings associations, finance lenders, and residential mortgage lenders from making or servicing high-cost residential mortgage loans or consumer loans secured by liens on real property to consumers whose income is at or below 120 percent of the median income for the area. The bill would define a high-cost loan to mean a loan that has an annual percentage rate in excess of a specified rate or that has points and fees in excess of 5 percent of the loan amount. The bill would also prohibit the following lending practices in the making of high cost loans: making several subsequent loans to refinance the original loan, selling of additional products in the loan agreement without informed consent, making of a loan without regard to the borrower's ability to repay, and charging of fees for loan services that bear no reasonable relationship to the value of services actually performed.~~

Because willful violations of these provisions with respect to savings associations, real estate brokers, and residential mortgage lenders would be crimes, this bill would impose a state-mandated local program by creating new crimes.

~~This bill would also impose various requirements with respect to loan contracts and loan brokerage contracts residential mortgage loans and consumer loans secured by liens on real property made or serviced by specified lenders. A willful violation of these provisions would be a crime and would result in the voiding of~~ permit a court to rescind the loan contract and award fees and costs, as specified.

*This bill would also make a statement of legislative findings and intent.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) There has been an explosion in the amount of credit made  
4 available to low-income borrowers in recent years, as a result of  
5 economic growth, technological changes, and financial  
6 innovations. A significant portion of this expansion has occurred  
7 in the subprime lending market, which refers to lending to  
8 borrowers who do not qualify for prime rates, either because of  
9 impaired credit histories or low incomes. According to the United  
10 States Department of the Treasury, subprime lending nationwide  
11 increased from \$35 billion in 1994 to \$370 billion in 1999.

12 (b) Subprime loans often are structured as mortgage  
13 refinancings or second mortgages. Approximately 70 percent of  
14 subprime loans are for consumer credit card consolidation. Most  
15 subprime loans are made by nondepository finance or mortgage  
16 companies that are not subject to routine regulatory compliance  
17 review.

18 (c) Many subprime lenders offer a vital service to low-income  
19 borrowers who do not qualify for credit from mainstream financial  
20 institutions. However, many low-income borrowers have been  
21 victimized by improper subprime lending practices such as  
22 excessive fees and interest rates, repetitive refinancings, hidden  
23 costs, unnecessary insurance, and deceptive use of balloon  
24 payments. The abusive practices found in the subprime lending  
25 industry are referred to as predatory lending. Through misleading  
26 and deceptive sales practices, predatory lenders target cash-poor  
27 homeowners as customers for high-cost loans that often deprive  
28 these homeowners of the equity in their homes.

29 (d) It is the intent of the Legislature to improve consumers  
30 protection against predatory lending practices.

SEC. 2. Section 10247.5 is added to the Business and Professions Code, to read:

~~10247.5. No real estate broker or agent shall originate any high-cost loan by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance prohibited by the regulations adopted by the Secretary of the Business, Transportation and Housing Agency pursuant to Section 13984 of the Government Code. The commissioner shall enforce this section.~~

10247.5. (a) No real estate broker or agent shall make or service any high-cost residential mortgage loan or consumer loan secured by a lien on real property to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.

(b) A “high-cost” loan means a loan that is either of the following:

(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before loan closing will exceed 5 percent of the total loan amount.

(c) The following lending practices are prohibited in the making of high-cost loans:

(1) The making of several subsequent loans to refinance the original loan, also known as “flipping.”

(2) The selling of additional products in a loan agreement without informed consent, also known as “packing.”

(3) The making of a loan without regard to the borrower’s ability to repay the loan based on accepted market standards.

(4) The charging of fees for loan services that bear no reasonable relationship to the value of services actually performed.

SEC. 3. Chapter 7.6 (commencing with Section 1922) is added to Title 4 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 7.6. LOANS SECURED BY REAL PROPERTY

~~1922. (a) Notwithstanding any other provision of law, this section shall apply to all subprime residential mortgage loans and consumer loans secured by liens on real property made or serviced by a real estate broker or agent, a commercial or industrial bank, a savings association, or a finance lender.~~

~~(b) Section 1670.5 applies to the provisions of a loan contract that is subject to this section.~~

~~(c) A loan found to be unconscionable pursuant to Section 1670.5 shall be deemed to be in violation of this section and subject to the remedies of this section.~~

~~(d) A lender, when making or negotiating a loan subject to this section, shall take into consideration in determining the size and duration of a loan, the financial ability of the borrower to repay the loan from all sources of income available to the borrower in the time and manner provided in the loan contract, and the ability of the borrower to refinance the loan at maturity.~~

~~(e) Escrow funds for a loan contract subject to this section shall be subject to and satisfy all applicable state and federal requirements, including Section 2609 of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. Sec. 2601 et seq.) and all applicable provisions of this code.~~

~~(f)~~

*1922. (a) Notwithstanding any other provision of law, this section shall apply to all high-cost residential mortgage loans and consumer loans secured by liens on real property made or serviced by a real estate broker or agent, a commercial or industrial bank, a savings association, or a finance lender to a consumer whose income is at or below 120 percent of the median income of the standard metropolitan statistical area in which the consumer resides or the nearest area if the consumer does not reside within a standard metropolitan statistical area.*

*(b) A “high-cost” loan means a loan that is either of the following:*

*(1) The annual percentage rate at consummation will exceed by more than 5 percentage points the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately proceeding the month in*

1 *which the application for the extension of credit is received by the*  
2 *creditor.*

3 *(2) The total points and fees payable by the consumer at or*  
4 *before loan closing will exceed 5 percent of the total loan amount.*

5 *(c) The following lending practices are prohibited in the*  
6 *making of high-cost loans:*

7 *(1) The making of several subsequent loans to refinance the*  
8 *original loan, also known as “flipping.”*

9 *(2) The selling of additional products in a loan agreement*  
10 *without informed consent, also known as “packing.”*

11 *(3) The making of a loan without regard to the borrower’s*  
12 *ability to repay the loan based on accepted market standards.*

13 *(4) The charging of fees for loan services that bear no*  
14 *reasonable relationship to the value of services actually*  
15 *performed.*

16 *(d) Before any person may provide real estate brokerage*  
17 *services, as defined in Section 10131 of the Business and*  
18 *Professions Code, to a borrower for a loan contract subject to this*  
19 *section, the broker shall enter into a written loan brokerage*  
20 *contract with the borrower that satisfies the requirement of this*  
21 *section.*

22 ~~(g)~~

23 *(e) The loan brokerage contract shall contain an explicit*  
24 *statement that the broker is acting as the agent of the borrower in*  
25 *providing brokerage services to the borrower, and when acting as*  
26 *agent for the borrower, the broker owes to that borrower a*  
27 *fiduciary duty of utmost care, honesty, and loyalty in the*  
28 *transaction, including the duty of full disclosure of all material*  
29 *facts. If the broker is authorized to act as an agent for any other*  
30 *person relative to the transaction, the loan brokerage contract shall*  
31 *contain a statement of that fact and identification of that person.*

32 ~~(h)~~

33 *(f) The loan brokerage contract shall contain a detailed*  
34 *description of the services that the broker agrees to perform for the*  
35 *borrower, and a good faith estimate of any fees the broker will*  
36 *receive for those services, whether paid by the borrower, the*  
37 *institutional lender, or both.*

38 ~~(i)~~

39 *(g) The loan brokerage contract shall include a clear and*  
40 *conspicuous statement of the conditions under which the borrower*

1 is obligated to pay the broker for brokerage services rendered  
2 under the contract.

3 ~~(j)~~

4 (h) The loan brokerage contract shall provide that, if the broker  
5 makes a materially false or misleading statement or omission in the  
6 inducement or implementation of the contract, ~~the borrower a~~  
7 ~~court~~ may, in addition to any other legal rights or remedies, ~~upon~~  
8 ~~written notice~~, do any of the following:

9 (1) Rescind the loan brokerage contract.

10 (2) ~~Recover~~ Award fees paid by the borrower to the broker for  
11 brokerage services rendered by the broker pursuant to the loan  
12 brokerage contract.

13 (3) ~~Recover~~ Award actual costs, including attorney's fees, for  
14 enforcing the borrower's rights under the loan brokerage contract.

15 ~~(k) Any person who violates any provision of the federal Real~~  
16 ~~Estate Settlement Procedures Act, as amended, or any regulation~~  
17 ~~promulgated thereunder, violates this section and shall be subject~~  
18 ~~to the penalties and remedies provided for in that act. This~~  
19 ~~subdivision shall be enforced by the agencies charged with~~  
20 ~~administering Section 10247.5 of the Business and Professions~~  
21 ~~Code and Sections 3398, 7508, 22168, and 50511 of the Financial~~  
22 ~~Code.~~

23 ~~(l) Any person who violates any provision of the federal Truth~~  
24 ~~in Lending Act, as amended, or any regulation promulgated~~  
25 ~~thereunder, violates this section and shall be subject to the~~  
26 ~~penalties and remedies provided for in that act. This subdivision~~  
27 ~~shall be enforced by the agencies charged with administering~~  
28 ~~Section 10247.5 of the Business and Professions Code, and~~  
29 ~~Sections 3398, 7508, 22168, and 50511 of the Financial Code.~~

30 ~~(m) The Secretary of the Business, Transportation and Housing~~  
31 ~~Agency shall adopt regulations to implement this section and to~~  
32 ~~define schemes, devices, or contrivances relating to the~~  
33 ~~advertising, brokering, and making of loans subject to this section~~  
34 ~~that are manipulative, deceptive or otherwise fraudulent.~~

35 ~~(n) Regulations adopted pursuant to this section shall prohibit~~  
36 ~~predatory lending practices in the subprime market undertaken by~~  
37 ~~lenders, brokers, or home improvement contractors, including, but~~  
38 ~~not limited to, the following:~~

39 ~~(1) The frequent making of new loans to refinance existing~~  
40 ~~loans, also known as "flipping."~~



~~(2) The selling of additional products in a loan agreement without informed consent, also known as “packing.”~~

~~(3) The making of loans without regard to the borrower’s ability to repay.~~

~~(4) The charging of fees for services that bear no reasonable relationship to the value of services actually performed.~~

~~(e) The regulations adopted under this section shall be enforced by the agencies charged with administering Section 10247.5 of the Business and Professions Code and Sections 3398, 7508, 22168, and 50511 of the Financial Code.~~

~~(p) If any provision of this section, excluding subdivisions (k) and (l), is willfully violated in the making or collection of a loan, the loan contract is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.~~

~~(q)~~

~~(i) Any person who willfully violates any provision of this section or who willfully violates any rule or order adopted pursuant to this section, shall, upon conviction, be punished by a fine of not more than fifty thousand dollars (\$50,000), by imprisonment in a county jail for not more than one year or in the state prison, or by both that fine and imprisonment.~~

~~1922.1. Any person who originates a consumer loan in violation of Section 17200 of the Business and Professions Code violates this chapter. This section shall be enforced by the agencies charged with administering Section 10247.5 of the Business and Professions Code and Sections 3398, 7508, 22168, and 50511 of the Financial Code.~~

SEC. 4. Section 3398 is added to the Financial Code, to read:

~~3398. No commercial or industrial bank shall originate any high-cost loan by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance prohibited by the regulations adopted by the Secretary of the Business, Transportation and Housing Agency pursuant to Section 13984 of the Government Code. The commissioner shall enforce this section.~~

~~3398. (a) No commercial or industrial bank shall make or service any high-cost residential mortgage loan or consumer loan secured by a lien on real property to a consumer whose income is at or below 120 percent of the median income of the standard~~



1 metropolitan statistical area in which the consumer resides or the  
2 nearest area if the consumer does not reside within a standard  
3 metropolitan statistical area.

4 (b) A “high-cost” loan means a loan that is either of the  
5 following:

6 (1) The annual percentage rate at consummation will exceed by  
7 more than 5 percentage points the yield on Treasury securities  
8 having comparable periods of maturity to the loan maturity as of  
9 the 15th day of the month immediately proceeding the month in  
10 which the application for the extension of credit is received by the  
11 creditor.

12 (2) The total points and fees payable by the consumer at or  
13 before loan closing will exceed 5 percent of the total loan amount.

14 (c) The following lending practices are prohibited in the  
15 making of high-cost loans:

16 (1) The making of several subsequent loans to refinance the  
17 original loan, also known as “flipping.”

18 (2) The selling of additional products in a loan agreement  
19 without informed consent, also known as “packing.”

20 (3) The making of a loan without regard to the borrower’s  
21 ability to repay the loan based on accepted market standards.

22 (4) The charging of fees for loan services that bear no  
23 reasonable relationship to the value of services actually  
24 performed.

25 SEC. 5. Section 7508 is added to the Financial Code, to read:  
26 ~~7508. No savings association shall originate any high-cost~~  
27 ~~loan by means of any manipulative, deceptive or other fraudulent~~  
28 ~~scheme, device, or contrivance prohibited by the regulations~~  
29 ~~adopted by the Secretary of the Business, Transportation and~~  
30 ~~Housing Agency pursuant to Section 13984 of the Government~~  
31 ~~Code. The commissioner shall enforce this section.~~

32 7508. (a) No savings association shall make or service any  
33 high-cost residential mortgage loan or consumer loan secured by  
34 a lien on real property to a consumer whose income is at or below  
35 120 percent of the median income of the standard metropolitan  
36 statistical area in which the consumer resides or the nearest area  
37 if the consumer does not reside within a standard metropolitan  
38 statistical area.

39 (b) A “high-cost” loan means a loan that is either of the  
40 following:

1     (1) *The annual percentage rate at consummation will exceed by*  
2 *more than 5 percentage points the yield on Treasury securities*  
3 *having comparable periods of maturity to the loan maturity as of*  
4 *the 15th day of the month immediately proceeding the month in*  
5 *which the application for the extension of credit is received by the*  
6 *creditor.*

7     (2) *The total points and fees payable by the consumer at or*  
8 *before loan closing will exceed 5 percent of the total loan amount.*

9     (c) *The following lending practices are prohibited in the*  
10 *making of high-cost loans:*

11     (1) *The making of several subsequent loans to refinance the*  
12 *original loan, also known as “flipping.”*

13     (2) *The selling of additional products in a loan agreement*  
14 *without informed consent, also known as “packing.”*

15     (3) *The making of a loan without regard to the borrower’s*  
16 *ability to repay the loan based on accepted market standards.*

17     (4) *The charging of fees for loan services that bear no*  
18 *reasonable to relationship to the value of services actually*  
19 *performed.*

20     SEC. 6. Section 22168 is added to the Financial Code, to read:

21     ~~22168. No finance lender shall originate any high-cost loan~~  
22 ~~by means of any manipulative, deceptive or other fraudulent~~  
23 ~~scheme, device, or contrivance prohibited by the regulations~~  
24 ~~adopted by the Secretary of the Business, Transportation and~~  
25 ~~Housing Agency pursuant to Section 13984 of the Government~~  
26 ~~Code. The commissioner shall enforce this section.~~

27     22168. (a) *No finance lender shall make or service any*  
28 *high-cost residential mortgage loan or consumer loan secured by*  
29 *a lien on real property to a consumer whose income is at or below*  
30 *120 percent of the median income of the standard metropolitan*  
31 *statistical area in which the consumer resides or the nearest area*  
32 *if the consumer does not reside within a standard metropolitan*  
33 *statistical area.*

34     (b) *A “high-cost” loan means a loan that is either of the*  
35 *following:*

36     (1) *The annual percentage rate at consummation will exceed by*  
37 *more than 5 percentage points the yield on Treasury securities*  
38 *having comparable periods of maturity to the loan maturity as of*  
39 *the 15th day of the month immediately proceeding the month in*

1 *which the application for the extension of credit is received by the*  
2 *creditor.*

3 *(2) The total points and fees payable by the consumer at or*  
4 *before loan closing will exceed 5 percent of the total loan amount.*

5 *(c) The following lending practices are prohibited in the*  
6 *making of high-cost loans:*

7 *(1) The making of several subsequent loans to refinance the*  
8 *original loan, also known as “flipping.”*

9 *(2) The selling of additional products in a loan agreement*  
10 *without informed consent, also known as “packing.”*

11 *(3) The making of a loan without regard to the borrower’s*  
12 *ability to repay the loan based on accepted market standards.*

13 *(4) The charging of fees for loan services that bear no*  
14 *reasonable relationship to the value of services actually*  
15 *performed.*

16 SEC. 7. Section 50511 is added to the Financial Code, to read:

17 ~~50511. No residential mortgage lender shall originate any~~  
18 ~~high-cost loan by means of any manipulative, deceptive or other~~  
19 ~~fraudulent scheme, device, or contrivance prohibited by the~~  
20 ~~regulations adopted by the Secretary of the Business,~~  
21 ~~Transportation and Housing Agency pursuant to Section 13984 of~~  
22 ~~the Government Code. The commissioner shall enforce this~~  
23 ~~section.~~

24 50511. (a) No residential mortgage lender shall make or  
25 service any high-cost residential mortgage loan or consumer loan  
26 secured by a lien on real property to a consumer whose income is  
27 at or below 120 percent of the median income of the standard  
28 metropolitan statistical area in which the consumer resides or the  
29 nearest area if the consumer does not reside within a standard  
30 metropolitan statistical area.

31 (b) A “high-cost” loan means a loan that is either of the  
32 following:

33 (1) The annual percentage rate at consummation will exceed by  
34 more than 5 percentage points the yield on Treasury securities  
35 having comparable periods of maturity to the loan maturity as of  
36 the 15th day of the month immediately proceeding the month in  
37 which the application for the extension of credit is received by the  
38 creditor.

39 (2) The total points and fees payable by the consumer at or  
40 before loan closing will exceed 5 percent of the total loan amount.

1 (c) The following lending practices are prohibited in the  
2 making of high-cost loans:

3 (1) The making of several subsequent loans to refinance the  
4 original loan, also known as “flipping.”

5 (2) The selling of additional products in a loan agreement  
6 without informed consent, also known as “packing.”

7 (3) The making of a loan without regard to the borrower’s  
8 ability to repay the loan based on accepted market standards.

9 (4) The charging of fees for loan services that bear no  
10 reasonable relationship to the value of services actually  
11 performed.

12 SEC. 8. Section 13984 is added to the Government Code, to  
13 read:

14 ~~13984. (a) The Secretary of the Business, Transportation and~~  
15 ~~Housing Agency, with respect to the origination of high-cost real~~  
16 ~~estate loans, shall adopt regulations with respect to both of the~~  
17 ~~following:~~

18 ~~(1) Defining schemes, devices, or contrivances that are~~  
19 ~~manipulative, deceptive, or otherwise fraudulent.~~

20 ~~(2) Means to curb abusive practices related to the advertising,~~  
21 ~~brokering, and making of high-cost loans, in order to protect~~  
22 ~~consumers and the equity that homeowners have built up in their~~  
23 ~~homes.~~

24 ~~(b) Regulations adopted pursuant to this section shall prohibit~~  
25 ~~predatory lending practices in high-cost real estate loans~~  
26 ~~undertaken by lenders, brokers, or home improvement~~  
27 ~~contractors, including, but not limited to, the following:~~

28 ~~(1) The frequent making of new loans to refinance existing~~  
29 ~~loans, also known as “flipping.”~~

30 ~~(2) The selling of additional products in a loan agreement~~  
31 ~~without informed consent, also known as “packing.”~~

32 ~~(3) The making of loans without regard to the borrower’s~~  
33 ~~ability to repay.~~

34 ~~(4) The charging of fees for services that bear no reasonable~~  
35 ~~relationship to the value of services actually performed.~~

36 ~~(c) In developing the regulations under subdivision (a), the~~  
37 ~~secretary shall consult with the Commissioner of Corporations, the~~  
38 ~~Real Estate Commissioner, the Commissioner of Financial~~  
39 ~~Institutions, and the Attorney General to ensure that the~~

1 ~~regulations appropriately address abusive high-cost lending~~  
2 ~~practices.~~

3 ~~(d) The regulations adopted under this section shall be enforced~~  
4 ~~by the agencies charged with administering Section 10247.5 of the~~  
5 ~~Business and Professions Code and Sections 3398, 7508, 22168,~~  
6 ~~and 50511 of the Financial Code.~~

7 ~~SEC. 9.~~—No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.

